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² At the time this petition was filed, WNNX had pending an Application for Review of the Commission's denial of its predecessor's request to reallocate Channel 263 from Anniston to Sandy Springs, Georgia, and modify Station WHMA's license accordingly (MM Docket No. 89-585). It filed this petition looking toward the withdrawal of the Application for Review upon grant of the proposal to relicense Station WHMA as a College Park station. However, on January 14, 1998, the pending Application for Review in MM Docket 89-585 was dismissed. See, Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama, 6 FCC Rcd 6580 (1991), app. for rev. dismissed 12 FCC Rcd 8392 (1997), app. for rev. dismissed 13 FCC Rcd 2104 (1998).

that Channel 261C3 be allotted to Anniston and Channel 264A to Ashland, Alabama. Small states that he will apply for Channel 264C3, if allotted to Covington, and WNNX states its intention to apply for Channel 263C at College Park, Channel 261C3 at Anniston and Channel 264A at Ashland. These proposals are mutually exclusive because Covington and College Park are located approximately 76 kilometers apart while the Commission's Rules specify a minimum distance separation of 99 kilometers for first adjacent Class C3 channels. Accordingly, these allotment proposals will be comparatively considered under the Commission's allotment priorities set forth in Revision of FM Assignment Policies and Procedures ("FM Priorities"), 90 FCC 2d 88 (1982).³

2. Both Small and WNNX filed their requests pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870, 4874 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

3. Small states that the reallocation would provide Covington, with a 1990 Census population of 10,026 persons, with its first FM, first fulltime service and first competitive service. He states that this would also represent the first local FM service to Newton County. Small recognizes that Covington has licensed to it fulltime AM Station WGFS but states that the station regularly signs off at 8:05 PM. Further, even if the AM station were to remain on the air 24-hours per day, he states that its nighttime authorized power is significantly reduced to only 250 watts and thus cannot provide service to all of Newton County during the nighttime hours. Therefore, he contends that the reallocation would, in reality, provide Covington, and its county, with its first nighttime service. In addition, the upgrading and reallocation of Station WLRR would enable the station to increase the service it provides within its 1 mV/m contour from its present 49,918 persons within a 1,800 square kilometer area to 180,387 persons within a 4,781 square kilometer area. Further, Small states that the reallocation would not deprive Milledgeville of a diversity of local stations, since there would remain four operating stations, two AM and two FM.

4. WNNX states that the reallocation of Channel 263, as a Class C3, from Anniston, Alabama, to College Park, Georgia, along with the allotment of Channels 261C3 to Anniston and Channel 264A to Ashland, Alabama, would result in a preferential arrangement of allotments and also better serve the public interest than would the reallocation of channels between Milledgeville and Covington. Because Covington already receives local aural service from fulltime AM Station WGFS, it submits that Small's proposal needs to be evaluated under the fourth allotment priority in FM Priorities, "other public interest matters." It states that College Park, with a 1990 Census population of 20,457 persons, would receive its first local

³ The Commission's allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight.

aural service, a priority three allotment, and Ashland, with a 1990 Census population of 2,034 persons, would receive its second local service. Anniston, on the other hand, would continue to receive local aural service from one FM and three AM stations, excluding the proposed Channel 261C3 replacement channel. In addition, it states that adoption of its proposal will eliminate the existing grandfathered 57.1 kilometer short-spacing between Station WHMA and Station WUSY, Channel 264C, Cleveland, Tennessee, and the 1.8 kilometer short-spacing to Station WVNA-FM, Channel 262C1, Tuscumbia, Alabama. According to WNNX, eliminating the short-spacing between Stations WHMA and WUSY would erase an overlap area containing 11,675 persons within a 295 square kilometer area and an area of interference caused to Station WUSY containing 2,306 persons within a 115 square kilometer area. As such, WNNX states that its proposal would be consistent with Commission policy of reducing or eliminating existing short-spacings. See, Eatontown, Point Pleasant and Red Bank, New Jersey, 5 RR 2d 1762 (1965).

5. WNNX recognizes that the Commission is concerned with the potential migration of stations from underserved rural areas to well-served urban areas. In this case, WNNX states that Station WHMA already operates in an urban setting since Anniston is the central city in the Anniston Urbanized Area (population 68,150 persons). This Urbanized Area receives service from the five Anniston stations as well as from Station WHOG(AM), Hobson City, Alabama, and Stations WOXR(AM), WVOK (FM) and WTBJ(FM), Oxford, Alabama, according to WNNX. College Park is located within the Atlanta Urbanized Area. Thus, to allay Commission concerns, WNNX provides information to demonstrate that College Park is separate from and independent of Atlanta.

6. Citing Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), WNNX states that the Commission considers three factors in determining a community's independence from an urbanized area and thus deserving of a first local service preference. These factors are: (1) signal population coverage; (2) the size of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city. It states that as a College Park station, WHMA's 70 dBu contour will encompass 44.3% of the Atlanta Urbanized Area and that the population of College Park is 5.2% of the population of the Atlanta Urbanized Area. These facts, according to WNNX, weigh in favor of its proposal because the Commission does not require a Tuck, supra, showing where less than 50% of the Urbanized Area will be encompassed and we have also ruled favorably on change of community proposals where the population ratio was less than 5.2%, citing Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (1996), Bay St. Louis and Poplarville, Mississippi, 10 FCC Rcd 13144 (1995), Scotland Neck and Pinetops, North Carolina, 7 FCC Rcd 5113 (1992) and D'Iberville and Wiggins, Mississippi, 10 FCC Rcd 10796 (1995). In addition, it states that College Park is not contiguous with Atlanta but rather is separated by the communities of East Point and Hapeville.

7. As to the factors which determine interdependence or independence, WNNX states that there are 802 businesses located within College Park where local residents are employed. Major employers include Hartsfield International Airport, the Federal Aviation Administration's

Southeastern Headquarters, twenty-seven hotels and motels, the Georgia International Convention Center, Coca Cola, John Weiland Homes, Hitachi, Valujet, Valvoline, Sysco Foods, and the Phoenix Office Corporate Park. WNNX also states that of those employed by College Park businesses, 40% commute from Atlanta and other nearby communities. It notes that College Park residents are served by two publications, the City of College Park Recreation Department Newsletter, and The South Fulton Neighbor, a daily paper which WNNX says includes news, activities and people in College Park and other incorporated and unincorporated areas within South Fulton County but intentionally excludes that which occurs within Atlanta's city limits.

8. WNNX states that College Park has its own local government that functions independently from Atlanta and employs 297 fulltime employees. It is run by an elected Mayor, four elected city council members, and a City Manager. College Park has its own police and fire departments, public works department and various utility, licensing and taxing departments. The community imposes its own taxes and its 1996-1997 Annual Budget was over \$52 million. In addition, College Park provides its residents with emergency medical service, a municipal court, local jail, electric power, water and sewer systems. Further, WNNX states that conversations with community leaders confirm that residents have a strong sense of independence from Atlanta. This is evidenced, according to WNNX, by the fact that a number of businesses include "College Park" in their name and events sponsored by the Recreation Department require non-residents to pay a non-resident fee to participate. The community also has its own local zip code and post office. Although College Park does not have its own local telephone book, it states that there is an independent listing in the government pages of the Atlanta phone book. In addition to its own local businesses, WNNX states that College Park is home to numerous religious and civic organizations and its own municipal golf course. In addition, it states that the city owns the College Park branch of the Fulton County Health Care Center and Fulton County Library, as well as owning and operating the Georgia International Convention Center. WNNX also points out that the city has several public schools and is home to the private Woodward Academy. WNNX states that College Park is a distinct advertising market separate from Atlanta because, in addition to advertising which reaches College Park residents from Atlanta media outlets, many businesses advertise in The South Fulton County Neighbor which does not circulate in Atlanta. Thus, it believes that College Park is independent from Atlanta and deserving of a first local service.

9. WNNX also believes that a first local service at College Park should be preferred over the preservation of a fifth such service at Anniston. In support, it states that Anniston has a population only 6,166 persons greater than College Park (26,623 vs. 20,457). It states that Station WHMA currently provides service to 658,920 persons within an 18,146 square kilometer area. If the change of community is granted, it states that the station will serve 2,131,288 persons within a 4,778 square kilometer area. Taking into account the 200,802 persons who would be served by proposed Channel 261C3 at Anniston and the 20,427 persons who would be served by proposed Channel 264A at Ashland, WNNX states that the number of people within the loss area will be reduced to 440,174. In addition, it states that the elimination of the pre-existing overlap and interference with Station WUSY, Cleveland, Tennessee, will also result in a gain in service. It states that there are 11,675 persons within the prohibited contour overlap

area and 2,306 persons within the interference area. WNNX states that with there will also be a gain in service from the elimination of the pre-existing overlap and interference areas with Station WUSY, Cleveland, Tennessee.

10. Within the loss area, WNNX states that 696 people within a 153 square kilometer area will receive two fulltime services, 14,559 persons will receive three fulltime services, 45,851 persons within a 2,552 square kilometer area will receive four fulltime services and 379,068 persons within a 7,829 square kilometer area will receive five or more services. All of the population within the gain area receives five or more fulltime services. Based on these figures, WNNX states that 86.1% of the population would continue to receive five or more fulltime aural services, 96.5% would continue to receive four or more services and 99.8% would continue to receive at least three such services. It contends that this loss figure is acceptable, citing Earle, Pocohantas and Wilson, Arkansas and Como and New Albany, Mississippi, 10 FCC Rcd 8270 (1995), where 85% of the loss area continued to receive five or more fulltime services, and Huntsville and Willis, Texas, 10 FCC Rcd 3329 (1995), where only 64% of the population within the loss area continued to receive at least five fulltime services. Since the replacement channel at Anniston and the second local FM channel at Ashland are possible only with the change of community for WHMA, WNNX contends that these new allotments should be taken into account in weighing the value of the College Park allotment. Finally, it states that it is not unusual for a station to propose a voluntary downgrade to accommodate a change in community, citing Homestead and North Miami Beach, Florida, 10 FCC Rcd 3149 (1995) and Canovanas, Puerto Rico, et al., 10 FCC Rcd 673 (1995), app. for rev. pending, and thus no special showings regarding this issue are required.

11. We believe both proposals warrant further consideration. However, Small did not provide a showing of reception services available within the loss and gain areas which would occur if Channel 264C3 is allotted to Covington and is requested to do so in its comments. Likewise, WNNX's showing as to reception services available within the loss area does not show what areas and population will be separately served by the allotment of Channel 261C3 at Anniston and Channel 264A at Ashland and is requested to do so in its comments since it is possible to reallocate Channel 263C3 to College Park without the Anniston and Ashland allotments. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 264C3 at Covington or Channel 261C3 at College Park.

Technical Summary

12. Channel 264C3 can be allotted to Covington in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.3 kilometers (10.2 miles) southeast to avoid a short-spacing to Station WUSY, Channel 264C, Cleveland, Tennessee and to accommodate petitioner's desired transmitter site.⁴ Channel 263C3 can be allotted to College Park with a site restriction of 12.0 kilometers (7.5 miles) northwest, to accommodate petitioner's

⁴ The coordinates for Channel 264C3 at Covington are 33-28-34 North Latitude; 83-45-34 West Longitude.

desired transmitter site, Channel 261C3 can be allotted to Anniston with a site restriction of 3.0 kilometers (1.9 miles) north, to avoid a short-spacing to Station WDXX, Channel 261C2, Selma, Alabama, and Channel 264A can be allotted to Ashland with a site restriction of 5.9 kilometers (3.7 miles) south, to avoid a short-spacing to Station WUSY, Cleveland, Tennessee.⁵

13. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
<u>Option I</u>		
Covington, Georgia	--	264C3
Milledgeville, Georgia	264A, 272A	272A
<u>Option II</u>		
Anniston, Alabama	263C	261C3
Ashland, Alabama	238A	238A, 264A
College Park, Georgia	--	263C3

14. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

15. Interested parties may file comments on or before August 31, 1998, and reply comments on or before September 15, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Timothy E. Welch
Hill & Welch
1330 New Hampshire Avenue, N.W., Suite 113
Washington, D.C. 20036
(Counsel to Small)

⁵ Channel 263C3 can be allotted to College Park at coordinates 33-45-32 North Latitude; 84-30-10 West Longitude. Channel 261C3 can be allotted to Anniston at coordinates 33-40-51; 85-48-56. Channel 264A can be allotted to Ashland at coordinates 33-13-15; 85-49-35.

Mark N. Lipp
Shook, Hardy and Bacon
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Washington, D.C. 20004
(Counsel to WNNX)

16. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

17. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.